

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:16-cv-335-RJC
(3:00-cr-140-RJC-1)**

JERRY THRASHER,)
)
Petitioner,)
)
vs.)
)
UNITED STATES OF AMERICA,)
)
Respondent.)
)

ORDER

THIS MATTER is before the Court on Petitioner's Motion for Abeyance, (Doc. No. 16), and on the Government's Motion to Dismiss, (Doc. No. 13).

On June 14, 2016, Petitioner filed a Motion to Vacate pursuant to 28 U.S.C. § 2255 through counsel, arguing that his career offender sentence and conviction pursuant to 18 U.S.C. § 924(c) are invalid pursuant to Johnson v. United States, 135 S. Ct. 2551 (2015). (Doc. No. 1). The matter was then stayed for several years pending the United States Supreme Court's consideration of Beckles v. United States, No. 15-8544, and the Fourth Circuit Court of Appeals' consideration of United States v. Ali, No. 15-4433 and United States v. Simms, 15-4540. See (Doc. No. 4). On April 27, 2020, the Court ordered the parties to explain why the stay should not be lifted based on the United States Supreme Court's decision in United States v. Davis, No. 18-431. (Doc. No. 10). The parties initially agreed that the stay should be lifted and the case should be reopened. (Doc. No. 11). The Court lifted the stay, (Doc. No. 12), and the Government filed a Motion to Dismiss, (Doc. No. 13). However, counsel for Petitioner has now filed this Motion seeking to stay this action pending the Fourth Circuit's decision in United States v. Rumph, No. 17-7080 in which the

defendant is seeking *en banc* rehearing asking the Fourth Circuit to reconsider United States v. Brown, 868 F.3d 297, 299 (4th Cir. 2005), in which the Fourth Circuit held that a challenge to a career offender sentence under the then-mandatory guidelines that were in effect before United States v. Booker, 543 U.S. 220 (2005) must be dismissed as untimely under 28 U.S.C. § 2255(f)(3). (Doc. No. 16). Counsel for the Government consents to this Motion. (Doc. No. 16 at 2).

The Court finds that the Motion to Stay is in the interest of justice and judicial economy and will be granted. The pending Motion to Dismiss will be denied as moot.

IT IS, THEREFORE, ORDERED that:

1. Petitioner's Motion to Stay, (Doc. No. 16), is **GRANTED**.
2. The Government's Motion to Dismiss, (Doc. No. 13), is **DENIED** as moot.
3. This case is held in abeyance pending the Fourth Circuit's consideration of Rumph, No. 17-7080. The Government shall have **60 days** following the Fourth Circuit's issuance of its mandate in Rumph file an answer, motion, or other response to the § 2255 Motion to Vacate.

Signed: September 25, 2020



Robert J. Conrad, Jr.
United States District Judge
